

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

THIS DOCUMENT RELATES TO
CLASS 1 JOHNSON & JOHNSON

Master Civil No. 01-cv-12257

MDL No. 1456

Judge Patti B. Saris

**THE J&J DEFENDANTS' RESPONSE TO CLASS 1 PLAINTIFFS'
STATUS REPORT REGARDING J&J DEFENDANTS**

Johnson & Johnson, Centocor, Inc., and Ortho Biotech Products L.P. ("J&J Defendants"), by their undersigned counsel, respectfully respond to the Class 1 Plaintiffs' Status Report regarding J&J Defendants:

1. The J&J Defendants agree with Plaintiffs' description of the events leading up to the Court's ruling allowing Mr. Haviland's clients to withdraw as Class 1 representatives. However, the J&J Defendants disagree with Plaintiffs' assertion that "the only remaining issues are the J&J Defendants' Post-Remand Motions for Summary Judgment," and that those summary judgment motions should now be set for oral argument.

2. The J&J Defendants believe that it is premature to address summary judgment until after the Court rules on Plaintiffs' motion to add a new Class 1 representative. More particularly, the Court should not consider the summary judgment motions until it decides whether or not Mrs. Jimmie Austed, Plaintiffs' proposed new Class 1 representative, is, in fact, a suitable class representative under Fed. R. Civ. P. 23(a)(3) and (4). If the Court determines that Mrs. Austed is not a suitable class representative, then Class 1's claims against the J&J Defendants will have to be dismissed, and the J&J Defendants' summary judgment motions would be moot.

3. The Court does not have at present a sufficient record to determine whether Mrs. Austed is a suitable class representative. In the affidavit filed in support of the motion to add Mrs. Austed, class counsel indicated that they “are in the process of obtaining copies of medical treatment and billing records for Mrs. Austed.” (Docket No. 7130.) To date, no such records have been provided to the J&J Defendants or to the Court, although class counsel has confirmed that they intend to provide copies when they become available. The J&J Defendants should be permitted to review Mrs. Austed’s records and take other appropriate discovery before the Court rules on Mrs. Austed’s application to serve as a class representative.

4. At this juncture, the J&J Defendants take no position concerning whether or not Mrs. Austed is a suitable Class 1 representative. Her medical and payment records may support her application, or they may show that her application should be denied. Regardless, the Court should defer consideration of the J&J Defendants’ motions for summary judgment until after it decides whether Mrs. Austed is a suitable class representative under Rule 23.

Dated: June 29, 2010

Respectfully submitted,

/s/ Erik Haas

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CERTIFICATE OF SERVICE BY LEXISNEXIS FILE & SERVE

I, Erik Haas, hereby certify that I am one of the attorneys for the J&J Defendants and that on June 29, 2010, I caused a copy of THE J&J DEFENDANTS' RESPONSE TO CLASS 1 PLAINTIFFS' STATUS REPORT REGARDING J&J DEFENDANTS to be served on all counsel of record by causing same to be posted electronically via Lexis-Nexis File & Serve.

/s/ Erik Haas

Erik Haas